

## CORPORAL PUNISHMENT: SURE TO BE A HIT!

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## U.S. Supreme Court

- *Ingraham v. Wright*, 430 U.S. 651 (1977) 5-4
- Paddlings – kept one junior high student out of school for several days and another full use of his arm for a week.
- Cruel and Unusual punishment clause of Eighth Amendment applies to criminal convictions, not corporal punishment of public school children.
- DP clause does not require notice and hearing prior to imposition of CP in public schools
- "Reasonable" CP authorized and limited by common law.

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## U.S. Supreme Court

- Common law only prohibits "excessive" CP
- "Public school teachers and administrators are privileged at common law to inflict only such corporal punishment as is reasonably necessary for the proper education and discipline of the child[.]"

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## Corporal Punishment

- Common Law - Administrators and teachers may use CP unless restricted by statute
- Banned in 31 states; 19 states allow "reasonable" CP
- Corporal punishment banned in Nebraska in 1988 with passage of 79-295:  
Corporal punishment shall be prohibited in public schools.
- Corporal punishment not defined in 79-295, another statute, in statute's legislative history, or anywhere else.

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## Daily v. Board of Education of Morrill County , 256 Neb. 73 (1999)

- Robert Daily – 32 years as a competent and effective teacher at Bridgeport
- 96-97 school year
- Allegedly struck K.P., 7<sup>th</sup> grade student
- School gave Daily notice of cancellation

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### Daily – Board Hearing

- Daily kept K.P. and W.R. in his classroom after his third-period class for disrupting class
- Disputed facts - Daily
  - "Tapped" K.P. to "get his attention"
  - "You hit me" - tried to get up out of his seat
  - Daily grabbed K.P. by the shoulders and made him stay in seat.
  - Asked to go to office, stayed in seat

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### Daily – Board Hearing

- Disputed facts - Daily
  - Admitted that he acted out of frustration
  - Denied intent to injure K.P.
  - Action was "involuntary" and acted "without even thinking about it."
  - Admitted that in his opinion, he should not have touched K.P.

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### Daily – Board Hearing

- Disputed facts – W.R.
  - "Smacked" K.P. with open hand on back of head and made K.P. cry
  - K.P. tried to leave - "sit back down"
  - Grabbed K.P. "had to kind of fight him to get him back to his seat"
  - Daily - "Oh, I barely tapped you"
  - K.P. - "Well, you're not supposed to hit a child anyways."

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### Daily – Board Hearing

- Principal- K.P. was disheveled, looked upset and reported he had been struck
- Observed "considerable redness" on K.P.'s shoulder and arm
- Daily to Principal:
  - "lost his temper, lost control"
  - Admitted striking K.P. and restraining him by arms
  - Admitted to acting from frustration
  - Conceded he should not have touched K.P.
  - Did not intend to hurt K.P.; was "involuntary reaction."

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### Daily – Board Hearing

- K.P. allegedly told another teacher months before incident - "We're going to get Mr. Daily fired." Kept out - Hearsay.
- Parent overheard KP tell her son that Daily didn't hurt him "just bopped me on the head" - Allowed into evidence.

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### Daily – Board Hearing

- "[T]he use of physical force out of frustration to strike [K.P.] on the head and restraining him by holding his arms constitute just cause within the meaning of [state statute] and are in violation of [79-295]; and thereby, constitute insubordination and unprofessional conduct."
- Board suspended Daily without pay for 30 days and ordered him to undergo counseling

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### Daily – District Court

- Daily “tapped a student” on back of head and “held his arms so that Daily could talk to [him] about his classroom behavior.”
- Daily’s actions did not constitute third degree assault, corporal punishment, insubordination or unprofessional conduct.
- Reversed board’s decision, holding that the evidence from the board hearing was insufficient for the board to find just cause to impose such a punishment.

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### Daily – Supreme Court

- Primary effect of 79-295, was to partially repeal 28-1413, which had provided in part:
  - The use of force upon or toward the person of another is justifiable if . . . The actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor and . . . the actor believes that the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of such force is consistent with the welfare of the minor[.]

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### Daily – Supreme Court

- Senator Ernie Chambers during the Judiciary Committee hearing that “It’s a term that is so well known in terms of its meaning. There have been court cases dealing with this subject that it doesn’t require a definition.”
- True, but not Nebraska cases.

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### Daily – What Corporal Punishment ISN'T

- Contact that does not cause pain is simply not corporal punishment.
- Corporal punishment also does not include physical contact that is not intended to punish a student for disapproved behavior but is instead intended to preserve order in the schools or intended to protect persons or property from harm.

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### Daily – What Corporal Punishment ISN'T

- Section 79-258: "administrative and teaching personnel may take actions regarding student behavior, other than those specifically provided in the Student Discipline Act, which are reasonably necessary to aid the student, further school purposes, or prevent interference with the educational process."

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### Daily – What Corporal Punishment ISN'T

- 79-258 authorizes teachers and admins. to use physical contact short of CP to degree necessary to preserve order and control in school environment.
- Authorizes "acceptable level" of incidental physical contact, as is necessary for teachers to promote personal interaction with students.
- "A certain amount of incidental physical contact is virtually unavoidable for people working together in a social environment."

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### Daily – What Corporal Punishment IS

- Corporal Punishment is “the infliction of bodily pain as a penalty for disapproved behavior.”
- Smacking student on head, hard enough to make K.P. cry, is corporal punishment
- Was not necessary to control the classroom or to prevent misbehavior, but was instead initiated responsively *after* K.P.’s misbehavior.
- Daily admitted actions based on frustration

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### Daily – What Corporal Punishment IS

- The “description of the [slapping] incident does not relate the use of physical contact as an attention-getting device, but instead depicts the infliction of physical discomfort on K.P. as a penalty for K.P.’s disapproved behavior.”
- Restraint of K.P. was NOT corporal punishment – reasonably necessary to further school purposes and prevent interference with educational process.

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“You’d think if they really wanted to punish me they’d send me to their room!”

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### Other Reported Nebraska Cases

- *Johanson v. Board of Educ.*, 256 Neb. 213 (1999) – declined to determine if placing soap on student's tongue was CP; labeled "unprofessional"
- *Cornhusker Christian Children's Home v. Department of Social Services*, 227 Neb. 94 (1987) – court implied that spanking on the buttocks with an open hand or suitable instrument for the purpose of inflicting temporary pain is CP.

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### Mark Woodhead – North Platte

- Mark Woodhead, 30 year teacher
- CM, 8 y/o 3<sup>rd</sup> grade student, disrupted Woodhead's physical education class.
- CM left class, went to office, Woodhead followed.
- CM refused to go to timeout room
- Woodhead grabbed CM's ankles; CM started kicking and yelling, Woodhead dragged CM 90 feet on his back to the timeout room, resulting in rug burns.

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### Mark Woodhead – North Platte

Woodhead testified:

- "In retrospect, I shouldn't have done that."
- "I shouldn't have pulled him. That was bad judgment on my part."
- Was not "in a fit of rage, not frustrated," when he dragged the student.
- "I was in no way trying to cause him harm or punish him."
- "He needed to be supervised."

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### Mark Woodhead – North Platte

- Superintendent testified dragging was CP
- Principal testified it was not CP; Woodhead did not intend to hurt CM
- 8 hours of testimony, 7 hours of deliberations
- Board voted 4-2 to retain Woodhead

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### Other Nebraska Personnel Cases

- Pulling hair and pinching students
- Slapping middle school girl
- Slamming student's head on desk
- Teacher "lost it," grabbed a student, and shoved her. The student was propelled into a table and hurt her arms and back.

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### Other States – Actions that are CP

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| <ul style="list-style-type: none"> <li>• Slapping a student</li> <li>• Striking student's head against locker</li> <li>• Kicking a student</li> <li>• Placing student in headlock</li> <li>• Kneeing student in the back</li> <li>• Choking and pulling on student's neck</li> <li>• Dragging</li> <li>• Head-butting</li> <li>• Compelling exercise</li> </ul> | <ul style="list-style-type: none"> <li>• Requiring position holds</li> <li>• Sticking with pins</li> <li>• Taping head to tree</li> <li>• <i>Rush v. Board of Educ.</i>, 312 Ill. App. 3d 473 (Ill. App. Ct. 3d Dist. 2000) – 16 year teacher allowed students to trade class detentions for electric shocks from a small engine.</li> </ul> |
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## Suggestions for Boards

- Policy must prohibit
- Discuss what is acceptable BEFORE a crisis – both with the administration and with staff
  - Taping mouth shut?
  - Tying to chair?
  - Running laps as punishment?  
(until someone vomits?)
- Rule 27 still applies
- Special education and other vulnerable students
- Potential civil liability

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## CORPORAL PUNISHMENT: SURE TO BE A HIT!



"Here at Tiny-Taught Preschool we're proud of our 'no spanking' policy."

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